

Testimony of Mr. John W. Burke III  
Representing the American Tree Farm System  
American Forest Foundation

Before

Committee on Agriculture  
U.S. House of Representatives

July 20, 2004

*Forest Land Enhancement Program and the  
Future of Family-Owned Forests*

Thank you for this opportunity to testify on behalf of over 50,000 family forest owners of the American Tree Farm System, who urge you to restore funding to the Forest Land Enhancement Program for fiscal year 2005.

Mr. Chairman, by vocation I am an attorney. But, after my family, my passion is my trees.

My wife and I own forest land and I manage for a family limited partnership over 2,000 acres of forest land near Richmond, Virginia. We take great care of our forest land and it is the intention of our family to leave much of it as a legacy for future generations. My parents viewed stewardship of the land as one of the highest priorities. I learned that lesson from them and now want to pass this blessing and responsibility on to future generations within our family.

We are proud of the stewardship ethic and are proud of the fact that our forest land has been certified by the American Tree Farm System as being managed in a sustainable manner. However, our stewardship and management for future sustainability cannot occur in a vacuum. It must occur in the context of the real world challenges and risks facing forest landowners each and every day.

In states like Virginia, there are four acres of family owned forest for every single acre owned by industry and government combined. Our family-owned forests supply the wood that supports a \$1.5 billion payroll – nearly one in ten of all manufacturing jobs in the state.

But our forests aren't just tree factories. They provide prime habitat for all kinds of species, and help nurture critical watersheds. They sequester carbon, produce oxygen, host all sorts of outdoor recreation, and provide the green space around our cities.

It is not easy trying to maintain this forest land for future generations. The pressures to sell are great, and living so near to urban centers such as Richmond and Fredericksburg multiplies those challenges. Currently, the U.S. is losing nearly 1.5 million acres of forest land every year to development and other forms of land conversion. This forest land and its wildlife are lost forever as it is converted to shopping centers, housing developments and strip malls. We do not oppose wise development. People must have places to live. However, programs like FLEP help to properly balance the pressures for development with sound, long term forest management.

The challenge of keeping our forest as forest is not unique to me. Today, there are 10 million family forest owners like myself in the United States. We hold nearly 60 percent of all the productive forestland in America. Almost 4.5 million

of us own 10 acres or more. It is this forest land that provides nearly 60 percent of all the forest products harvested in the U. S.

Together we face what we call the nation's "Invisible Forest Health Crisis." A crisis where many forest owners don't see a way to preserve their family's heritage of voluntary, private stewardship.

It's a fact that most families don't own forests just for the money. Most say they're in it for pride and pleasure first; a profit on timber falls further down the list. But even the most conservation-minded owner needs cash. For taxes, insurance, to invest in the future of their forests.

More and more these days, that cash can't be found just by working in the woods. Markets for wood are sluggish, near non-existent for lower-value trees. Land prices and taxes are high, and getting higher as cities and towns grow closer to the woods.

Just as important, our city neighbors prize the "environmental goods" we produce. Our forests are the green places folks want to get away to. Their water is cleaner and cheaper because of the watersheds we manage. We produce oxygen in our forests, and take up carbon dioxide.

America's family owned forests provide the critical habitat needed for the vast majority of our treasured wildlife. Our valuable wildlife resources cannot exist in parks and federal and state forests alone. The significant private landowner base and their diverse sound forest management provide an overwhelming majority of habitat for all of the wildlife species that we know and love.

It seems public values and public policy toward family forest owners are based on a paradox – that their land can sustain itself without cash flow, and that vital public goods can be produced without investment.

When this Committee introduced the Forest Land Enhancement Program into the 2002 Farm Bill, it seemed to us a way around this paradox. It was the first new forest incentive program in decades. Family forest owners were excited. We believed that FLEP affirmed Congress's intent to tackle our invisible forest health crisis, and help us sustain our heritage of private stewardship.

True, FLEP was a small program – amounting to roughly six-tenths of one percent of all conservation funding authorized in the Farm Bill. But it was the only program designed to address conservation on our 60 percent share of the nation's timberland.

We were dismayed to learn that the President's budget eliminated FLEP. Despite what others may tell you, it is not a redundant program. Virtually all other programs are designed primarily for agricultural operators – either by statute [the Conservation Security Program, for example] or through the manner in which they're administered [like EQIP]. State rating systems for cost-share eligibility can make it very difficult for forest owners who aren't farmers to even be considered for funding.

Among family forest owners, though, fewer than 1 in 10 are also farmers or ranchers. For the rest, FLEP was their best shot at gaining access to Federally-funded conservation programs.

These family forest owners are not wealthy. Their median combined annual household income is \$50,000. With pressures from urbanization, exploding state and local property taxes, increasing regulations and loss of low value wood markets to overseas competition, many can't find the resources or the will to hang on to their land.

Making these investments in forestry is no easy choice. It takes patience, as your "assets" mature for 20, 40, 60 even 100 years – all the while subject to natural disasters like fire, flood, drought, wind, insects and disease. And it takes a measure of faith, as markets will change in ways no one can predict, and returns may flow only to one's heirs.

FLEP is certainly not the whole answer, but it is part of the answer. It recognized the value our forest land provides to our communities and this nation – pure water, clean air, abundant wildlife and healthy rural economies. And it helped sustain the cash flow we need to keep our land in trees.

On behalf of our 50,000 Certified Tree Farmers and all family forest owners, I urge you to restore FLEP funding for 2005, maintain the program for the future, and explore other ways to resolve America's invisible forest health crisis.

## **DISCLOSURE REQUIREMENT**

**Required by House Rule XI, clause 2(g) and Rules of the Committee on Resources**

**1. Name:**

John W. Burke III

**2. Business Address:**

One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030

**3. Business Phone Number:**

804.775.4377

**4. Organization you are representing:**

American Tree Farm System, American Forest Foundation

**5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing.**

SEE ATTACHED RESUME

**6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing.**

SEE ATTACHED RESUME

**7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing.**

SEE ATTACHED RESUME

**8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying.**

SEE ATTACHED RESUME

**Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 2000, the source and the amount of each grant or contract.**

None

**Any federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 2000, by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract.**

SEE NEXT PAGE

**Current and Past Grants from Federal Government Sources to  
American Forest Foundation**

<b>Funding Source</b>	<b>Program Name &amp; AFF Contact</b>	<b>Project Purpose</b>	<b>Grant Amount</b>	<b>Project Dates</b>
USDA FS 03-DG11244224-391	Urban & Community Forestry Curriculum Development PLT-Kathy	Testing/Design of " The Places We Live" HS Curriculum	\$10,000	9/1/03-8/31/04
USDA/Forest Service/NUCFAC 03-DG-11244225-160	Urban & Community Forestry GreenWorks PLT-Kathy	Mobilizing Internet for UCF Education	\$83,187	10/01/02-9/30/04
USDI/BLM CA#PAA997013	Fire Education ANNUAL GRANT PLT-Dave	Support for workshops/ materials re: invasive species, riparian areas, wildland fires	\$250,000	8/31/03-9/30/07
USDA/Forest Service	Forests for Watersheds and Wildlife Conservation Programs- Drue	General Program Support Forest owner outreach	\$100,000	03/03-03/04
EPA	EETAP PLT-Kathy	Teacher Training Initiative	\$124,056	Continuing multi- year
USDI/Fish and Wildlife Service	Forested Flyways Conservation Programs- Drue	Gopher Tortoise Conservation	\$315,475	9/1/03-12/31/05
EPA	Tree Farm Conservation Programs- Drue	Forestry BMP Landowner Awareness Program	\$52,560	7/15/02-7/15/04
NFWF (pending)	Forested Flyways Conservation Programs- Drue	GA Bird Initiative	\$52,000	

AS OF MAY 15, 2004



**John W. Burke III**  
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Mr. Burke's practice involves transactional work, including technology transfers, licensing agreements and joint venture arrangements, protection of intellectual property, including trademarks and copyrights as well as dispute-related work, including infringement claims in the areas of copyright, trademark, trade secret, and related intellectual property.

In addition, his practice addresses many areas including retail and distribution, forest products, advertising, and private sector participation in defense related needs (including SBIR). He lectures frequently on topics in the intellectual property area, including trademarks, unfair competition, trade secrets, computer law and licensing, and on topics relating to forestry and the forest products industry.

**Department**

- Corporate Services

**Practice Areas**

- Intellectual Property
- Emerging Growth and Technology

**Firm Management**

- Leader of Intellectual Property Team, 1985-1999
- Recruiting Committee Chairman, 1996-1997
- Recruiting Committee Member, 1982-1985, 1989-1990
- Associate Committee, 1993-1995

## Education

- University of Virginia School of Law, Charlottesville, Virginia, J.D., 1979
  - Order of the Coif
  - Law Review: *Virginia Law Review*, Notes and Survey Editor, 1978-1979
- College of William and Mary, Williamsburg, Virginia, B.A., 1976
  - Phi Beta Kappa

## Publications

- "Business on the Internet: An Intellectual Property Perspective," June 1999
- "Recent Developments in Trademark Law," 1998-1999
- "Trademarks and Service Marks," June 1998
- "Ten Strategies for Trade Secret Protection," June 1998
- "Recent Developments in Trademark Law," 1997-1998
- "The Federal Dilution Act, *Intellectual Property Newsletter* of the Virginia State Bar
- "Ring the Bell," *Virginia Lawyer*, November 1995
- "Federal Registration of Trademarks and Service Marks," Trademark Law, *Virginia Lawyer*, December 1988
- "Recent Developments in Trademark Law," 1996-1997

## Seminars

- Summit on Virginia's Forest Industries, Danville, Virginia, May 20, 2004
- Three Presentations on Trademarks, Copyrights and Trade Secrets, The Community College Workforce Alliance Small Business Consulting Center, Richmond, Virginia, October 2003
- Natural Resources Leadership Summit, Williamsburg, Virginia, April 10-11, 2003
- The Five Ps of Promoting Forestry, Wintergreen, Virginia, April 5, 2003
- Virginia's Agriculture Task Force, Growth & Prosperity from the Land, Virginia Forestry Association, Wintergreen, Virginia, April 4, 2003
- Forestry Presentation, Ruritan, Reedy Church, Virginia, February 11, 2003
- Small Business Innovation Research and Development Workshop, Charlottesville, Virginia, January 23, 2003
- Hanover-Caroline Soil & Water Conservation District, Hanover, Virginia, Awards Banquet Speaker, November 21, 2002
- Intellectual Property Workshop, Wilmington, Delaware, November 19, 2002
- "Trademarks and Copyrights," Jacksonville, Florida, September 30, 2002
- American Tree Farm System, National Conference, Asheville, North Carolina, November 2, 2002
- Small Business Innovation Research and Development Workshop, Richmond, Virginia, September 19-20, 2002
- Protection of Intellectual Property, Triadelphia, West Virginia, August 26, 2002
- Protection of Intellectual Property, Leesburg, Virginia, July 18, 2002
- Woodland Law, A Landowners' Guide to Forestry and Legal Issues, Fredericksburg, Virginia, May 23, 2002
- Small Business Innovative Workshop, Falls Church, Virginia, May 16, 2002
- Forestry Issues, Regional meeting of American Tree Farm System, January 29, 2002
- Protecting Your Intellectual Property, SBIR/STTR Workshop, Richmond, Virginia, January 16, 2002
- Forestry Issues, Society of American Foresters, Tappahannock, Virginia, November 15, 2001



- Protecting Your Intellectual Property, SBIR/STTR Workshop, Charlottesville, Virginia, September 2001
- Protecting Your Intellectual Property, SBIR/STTR Workshop, Norfolk, Virginia, September 2000
- Protecting Your Intellectual Property, SBIR/STTR Workshop, Blacksburg, Virginia, June 2000
- 18th Annual Business Law Seminar, "E-Commerce: Basics for the General Business Practitioner," Virginia CLE, April 2000
- Protecting Intellectual Property, SBIR/STTR Workshop, Harrisonburg, Virginia, March 2000
- Case Law Development in Trademark Law, Greater Richmond Intellectual Property Law Association, Richmond, Virginia, January 2000
- Protecting Your Intellectual Property, SBIR/STTR Workshop, Newport News, Virginia, October 1999
- Case Law Development in Trademark Law, DuPont CLE Intellectual Property Law Seminar, Wilmington, Delaware, October 1999
- Protecting Intellectual Property, SBIR/STTR Conference, Fairfax, Virginia, September 1999
- Internet Conference, A Workshop on Internet Legal Issues, Richmond, Virginia, August 1999
- Business on the Internet: An Intellectual Property Perspective, Virginia CLE – Computer Law 1999, Richmond, Virginia, June 1999
- Recent Developments in Trademark Law, Virginia CLE, September 1998
- Protecting Intellectual Property, SBIR/STTR Conference -- Blacksburg, Virginia, September 1998
- Intellectual Property Conference, Richmond, Virginia and Tysons Corner, Virginia, May 1998
- Intellectual Property: SBIR/STTR Conference, Williamsburg, Virginia, May 1998
- Intellectual Property: Defense Technologies Conference, CIT, March 1998
- Recent Developments in Trademark Law, Virginia CLE, October 1997
- Protecting Intellectual Property, SBIR Workshop, September 1997
- Navigating the Net, Maximizing Your Business Opportunities with Today's Technology, Richmond, VA, April 1997
- Doing Business on the Internet, Possibilities and Potholes on the Information Super Highway, Tysons Corner, VA, April 1997
- Doing Business on the Internet, Washington, DC, November 1996
- Navigating the Net, Intellectual Property Issues, Richmond, VA, October 1996
- Recent Developments in Trademark Law, Virginia CLE, October 1996
- E-mail and Confidentiality, Technology 2000, July 1994
- Protecting and Utilizing Technology, Farm Machinery Manufacturing, Bahamas, September 1993
- Protecting and Utilizing Technology, Workshop in Zurich, October 1992
- Conducting Trade Secret Audit, Workshop in Korea, March 1992 and October 1992

**Professional Affiliations**

- Virginia State Bar
  - Chairman, Section of Intellectual Property, 1994-1995
  - Chairman-Elect, Section of Intellectual Property, 1993-1994
  - Vice-Chairman, Section of Intellectual Property, 1992-1993
  - Secretary, Section of Intellectual Property, 1991-1992
  - Board of Governors, Section of Intellectual Property, 1988-1991
- Virginia Bar Association, Chairman, Committee on Intellectual Property, 1990
- Virginia Forestry Association
  - Board of Directors
  - Executive Committee
- American Tree Farm System, Virginia Committee
  - Chairman, 2004
  - Vice Chairman, 2002-2003
- Forest Landowners Association
- Member of Governor Warner's Task Force to Study Improving Agriculture and Forestry
- Member of Advisory Committee of Family Forest Project
- SFI Standards Review Committee, Spring 2004
- Member of Steering Committee of Virginia Forest Industries Study

**Admitted**

- Virginia 1979
- U.S. District Court for the Eastern District of Virginia 1979
- U.S. District Court for the Western District of Virginia 1979
- U.S. Court of Appeals for the 4th Circuit 1979

**Place of Birth**

- Fredericksburg, Virginia